

CV 19 5487

RBL

1 Scott A. Whittington
2 P. O. Box 2147
3 Woodland, Washington 98674-0020
4 *In Propria Persona*

FILED	LODGED
RECEIVED	
JUN 03 2019	
CLERK U.S. DISTRICT COURT	
WESTERN DISTRICT OF WASHINGTON AT TACOMA	
BY	DEPUTY

6

7 United States district court¹
8 Western District (sic) of Washington

9 In re: Third Party Summons:

10 Scott A. Whittington,

Case #

11 Complainant,

Petition to Quash Third
12 v. Party Summons re Scott A.
13 Internal Revenue Service;
14 Internal Revenue Agent Brad Marler,
15 (Idaho Falls, Idaho); and, Unspecified Group
Manager Steve Dyson (Nevada)

Alternatively,
Petition for Extraordinary Writ:
Writ of Prohibition

16 Respondents.

17 I. Comes now Scott A. Whittington, as a Private Citizen of Washington; and, pursuant to
the INTERNAL REVENUE CODE, 26 USC §§ 7609(b)(2) and 7603, and 28 U.S.C. § 1651,
18 and hereby moves this court to quash the administrative summons – issuing from Idaho,
19 directed to a company in California, regarding me, in Washington state – by a “Brad
20 Marler” (sic), and purportedly “approved” by “Steve Dyson” (situated in Nevada)
employee of the Internal Revenue Service, an agency of the federal government, “In the
21 Matter of SCOTT A. WHITTINGTON, PO BOX 2147, WOODLAND, WA 98674-0020”
22 (sic), to:

23 ¹ As specified in Form 2039 (Rev. 12-2008) Catalog Number 21405J.

1 A. "TOMARCO, at "14848 NORTHAM ST, LA MIRADA, CA 90638"; (sic)
2 Received on the 29th day of May, 2019, purportedly pertaining to "Period information:
3 Form 1040 for the calendar periods ending December 31 , 2006, December 31 , 2007,
4 December 31, 2008, December 31, 2009 and December 31 , 2010" (sic) (See
5 AFFIDAVIT OF SCOTT A. WHITTINGTON, and its Exhibit A, 5th page "Attachment
6 1 to Summons Form 2039").

7 II. This court has jurisdiction pursuant to the above referenced Public Laws, and U.S. Code
8 sections.

9 III. This petition is supported by the following MEMORANDUM OF POINTS AND
10 AUTHORITIES, and AFFIDAVIT of Private Citizen Scott A. Whittington to be filed
11 concurrently herewith.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 IV. **PROCEDURAL REQUIREMENTS**

14 A. To obtain enforcement of a summons, the IRS must first establish its "good faith"
15 by showing that the summons: (1) is issued for a legitimate purpose; (2) seeks
16 information relevant to that purpose; (3) seeks information that is not already
17 within the IRS' possession; and (4) satisfies all administrative steps required by
18 the United States Code. United States v. Powell, 379 U.S. 48, 57-58 (1964).

19 V. **FACTUAL BACKGROUND**

20 A. On or about the 29th day of May, 2019, I, Scott A. Whittington, of Washington,
21 received the documents identified herein and found in Exhibit A by email from
22 officers or employees of "TOMARCO, at "14848 NORTHAM ST, LA MIRADA,
23 CA 90638", consisting of a Form 2039 summons "In the matter of: SCOTT A
24 WHITTINGTON, PO BOX 2147, WOODLAND, WA 98674-0020" (Exhibit A,
page 1), apparently issued and signed by a Brad Marler, identified in the
"Attestation" thereof as "REVENUE OFFICER, 1000395675", of the Internal
Revenue Service, an agency of the federal government, giving a business address
as "1820E 17TH ST, STE 290. IDAHO FALLS ID 83404-6469" (sic).
B. Exhibit A's Form 2039 summons specifies, in its "header" section (above the

1 Caption: "The Commissioner of Internal Revenue"), specifies:

2 **"Periods: See Attachment 1 to Summons Form 2039 for Period Information"**
(bold emphasis in original).

3 1. Whatever I may or may not owe the IRS for the periods identified in
4 "attachment 1 to Summons Form 2039" (Exhibit A, page 5) to which TOMARCO
5 is directed on page one, has been adjudicated in United States Tax Court (USTC)
6 in June, 2015 (Exhibit B) and upheld in 9th Circuit Court of Appeals years ago.
7 (See AFFIDAVIT OF SCOTT A. WHITTINGTON, and its Exhibit B, T.C.
8 Memo. 2015-152, Filed August 11, 2015).

9 C. Exhibit B establishes that the "Period information: Form 1040 for the calendar
10 periods ending December 31 , 2006, December 31 , 2007, December 31, 2008,
11 December 31, 2009 and December 31 , 2010" (Exhibit A, page 5)

12 1. is in IRS' possession,
13 2. that "determining the liability of any person for any internal revenue tax or
14 the liability at law or in equity of any transferee or fiduciary of any person
15 in respect of any internal revenue tax, or collecting any such liability" has
long been completed; (Exhibit B) and, in fact,
16 3. those "periods" have already been adjudicated (as has December 31, 2011)
17 (Exhibit B), and that the Form 2039 summons issued and signed by Brad
18 Marler is an abuse of administrative authority.

19 VI. ARGUMENT

20 A. Brad Marler's Form 2039 summons "In the matter of: SCOTT A
21 WHITTINGTON, PO BOX 2147, WOODLAND, WA 98674-0020", seeking
22 information regarding "Period information: Form 1040 for the calendar periods
23 ending December 31 , 2006, December 31 , 2007, December 31, 2008, December
24 31, 2009 and December 31 , 2010" (Exhibit A, page 5), as identified, (Exhibit A,
page 1) **"Periods: See Attachment 1 to Summons Form 2039 for Period
Information"**; bold emphasis in original)

B. fails to meet Powell's first "good faith" test, *i.e.*, showing that the summons: (1) is
issued for a legitimate purpose; United States v. Powell, 379 U.S., at 57,

1 1. necessarily failing to meet Powell's second "good faith" test, *i.e.*, showing
2 that that the inquiry may be relevant to the (legitimate) purpose; *Id.*,
3 2. fails to meet Powell's third "good faith" test, *i.e.*, showing that the
4 information sought² is not already within the Commissioner's possession;
 Id., at 57-58.

5 C. Exhibit A, page 1, the "Attestation" to Brad Marler's Form 2039 summons "In the
6 matter of: SCOTT A WHITTINGTON, PO BOX 2147, WOODLAND, WA
7 98674-0020", "1820 E 17TH ST, STE 290. IDAHO FALLS ID 83404-6469"
8 (sic), also establishes that said "Summons" fails to meet Powell's fourth "good
9 faith" test, " satisfies all administrative steps required by the United States Code.
 United States v. Powell, 379 U.S., at 58.

10 1. The first of those administrative steps, quoting Powell, is: "-- in particular,
11 that the 'Secretary or his delegate,' after investigation, has determined the
12 further examination to be necessary and has notified the taxpayer in
13 writing to that effect."

14 Marler not only failed to notify me; his Form 2039 summons specifically noted
15 that "this summons is exempt from the notice requirements"³;

16 2. Although found at pages 55-56, Powell referenced 61 Cong.Rec. 5855
17 (Sept. 28, 1921). [Footnote 13],
18 "Congress recognized a need for a curb on the investigating powers of low
19 echelon revenue agents, and considered

20 Page 379 U. S. 56

21 that it met this need simply and fully by requiring such agents to clear any
22 repetitive examination with a superior." (formatting in original)⁴

23 While there is, indeed, a "Signature of Approving Officer" included in , the
24 "Attestation" (apparently in an attempt to "fake" compliance with "Congress
 recognized... need... by requiring such agents to clear any repetitive examination

22 ² "Period information: Form 1040 for the calendar periods ending December 31 , 2006, December 31 , 2007,
23 December 31, 2008, December 31, 2009 and December 31 , 2010" (Exhibit A, 5th page)

24 ³ Raising additional issues discussed below.

⁴ <https://supreme.justia.com/cases/federal/us/379/48/>

1 with a superior”), that “Signature of Approving Officer” is the signature of Brad
2 Marler, himself, purporting to be “for Steve Dyson”, identified in said
3 “Attestation” as “Group Manager” at “1820 E 17TH ST, STE 290. IDAHO
4 FALLS ID 83404-6469”. A cursory review of Exhibit A, page 6, shows Steve
5 Dyson’s Title as “Manager” (not specifying any Group), with a Nevada phone
6 number.

7 3. Marler’s Form 2039 summons (Exhibit A, page 1) makes a cursory
8 “request” that includes
9 “Copies of all contracts with Scott Whittington, Seismic Support Services
10 LLC or related entities including but not limited to sales contracts or
11 employment contacts (sic).
12 “Front and back copy of payment instruments to Scott Whittington,
13 Seismic Support Services LLC or related entities from 01/01/2017 to date
14 of compliance.
15 “Copy of all 1099s issued to Scott Whittington, Seismic Support Services
16 LLC or related entities.”

17 B. The administrative history⁵ leading up to Exhibit B (which includes Form(s) 1065
18 and accompanying K-1(s)) establishes that IRS (and therefor, Marler) is fully
19 aware that
20 4. no “contracts with... including... sales contracts or employment contacts
21 (sic)”, no “payment instruments to”, and no “1099s issued to” Scott
22 Whittington (as an individual) exist; that
23 5. any and all “contracts” were between TOMARCO (a California company)
24 and Seismic Support Services LLC (a Delaware LLC); and that
any such contracts were – legitimately – signed *for and on behalf of*
Seismic Support Services LLC (a Delaware LLC)

C. I contend that IRS’s established knowledge (Exhibit B) necessarily establishes

⁵ Which began with a to a campaign of correspondence no later than January 4, 2010, with “information requests” to Seismic Support Services, LLC, that failed to comply with written guidance in the Internal Revenue Manual (Partnership - Audit Techniques Guide (ATG); LMSB-04-1007-070 Revised 10/2007) and proceeded through years up to and including the present.

1 that the reference “from 01/01/2017 to date of compliance” within (Exhibit A,
 2 page 1) – viewed in light of Brad Marler’s own hand providing the “Signature of
 3 Approving Officer” in the “Attestation” on his own Form 2039 summons (Exhibit
 4 A, page 1) – demonstrates the strong likelihood that such “request” was intended
 5 to add a thin veneer of “legitimate purpose” to appear to be in compliance with
 6 Powell’s first “good faith” test, *i.e.*, to show that the summons: (1) is issued for a
 7 legitimate purpose; United States v. Powell, 379 U.S. 48, at 57.

8 D. Regarding Marler’s failure to notify me (see comment under ¶ VI., C., 1., and *n.*
 9 3) and his Form 2039 summons’ specific note that “this summons is exempt from
 10 the notice requirements”, it should be noted that Marler included (Exhibit A, page
 11 4) “Sec. 7609. Special procedures for third-party summons” (notwithstanding his
 12 “is exempt” note).

13 1. If, as a matter of law, Marler’s Form 2039 summons “is exempt from the
 14 notice requirements”, that exemption may only be used under 26 U.S.C. §
 15 7609. This is because NOTICE OF CONTACT OF THIRD PARTY
 16 CONTACTS (capitalization mine) to me, is REQUIRED by 26 U.S.C. §
 17 7602(c)(1), (2).

18 a. I certainly did not “authorize” contact, 26 U.S.C. § 7602(c)(3)(A);
 19 and

20 b. there is no indication that “the Secretary determines for good cause
 21 shown that such notice would jeopardize collection... or... may
 22 involve reprisal against any person”, 26 U.S.C. § 7602(c)(3)(B);
 23 and

24 c. the established fact that the “Period information: Form 1040 for the
 25 calendar periods ending December 31 , 2006, December 31 , 2007,
 26 December 31, 2008, December 31, 2009 and December 31 , 2010”
 27 (Exhibit A, page 5), as identified, (Exhibit A, page 1) “Periods:
 28 **See Attachment 1 to Summons Form 2039 for Period**

Information"; bold emphasis in original) were fully adjudicated in June, 2015 (as was "December 31 , 2010") (Exhibit B), SEE: ¶¶ V.C.3 and VI.A., above, demonstrates that Marler's Form 2039 summons and his specific note that "this summons is exempt from the notice requirements" cannot justifiably be based upon "any pending criminal investigation", 26 U.S.C. § 7602(c)(3)(C).

2. If, in fact, there were such “pending criminal investigation”, it could only find exception of the REQUIRED notice provisions of 26 U.S.C. § 7602(c)(1), (2) if it be found in 26 U.S.C. § 7602(d), which would prohibit Marler from issuing – in Idaho – a Form 2039 summons; to a California company; regarding an individual in Washington, *with which individual* that California company has never had a contract.

E. In the absence of one of 26 U.S.C. § 7602(c)(3)'s "exceptions", there is but one legal way that "exception" may be found: 26 U.S.C. § 7609(c)(2)(D) or (E).

1. 26 U.S.C. § 7609(c)(2)(A) is unavailing. Marler's Form 2039 summons was not issued to me (in fact, Marler advised TOMARCO that "this summons is exempt from the notice requirements").
2. 26 U.S.C. § 7609(c)(2)(B) is similarly unavailing. Exhibit B, and the administrative history that led up to it, *See:n. 5*, establishes that IRS (and therefor Marler) is fully aware that contracts existed between TOMARCO, a California company, and Seismic Support Services, LLC, a Delaware LLC, for the "Period information: Form 1040 for the calendar periods ending December 31 , 2006, December 31 , 2007, December 31, 2008, December 31, 2009 and December 31 , 2010" (Exhibit A, page 5), as identified, (Exhibit A, page 1) "**Periods: See Attachment 1 to Summons Form 2039 for Period Information**"; bold emphasis in original) (as well as "December 31, 2011"), making "to determine whether or not records of

1 the business transaction or affairs of an identified person have been made
2 or kept" inapplicable.

3 3. Exhibit B, and the administrative history that led up to it, *See: note. 5*,
4 establishes that 26 U.S.C. § 7609(c)(2)(C) is unavailing, as well; neither
5 TOMARCO, a California company, and Seismic Support Services, LLC, a
6 Delaware LLC, is "a bank or other institution described in section
7 7603(b)(2)(A)". Exhibit B, and the administrative history that led up to it,
8 establishes that.

9 4. As to 26 U.S.C. § 7609(c)(2)(D), "issued in aid of the collection of- (i) an
10 assessment made or judgment rendered against the person with respect to
11 whose liability the summons is issued, or (ii) the liability at law or in
12 equity of any transferee or fiduciary of any person referred to in clause
13 (i)", I have made clear –, before during and since the "Period information:
14 Form 1040 for the calendar periods ending December 31 , 2006,
15 December 31 , 2007, December 31, 2008, December 31, 2009 and
16 December 31 , 2010" (Exhibit A, page 5), as identified, (Exhibit A, page
17 1) "Periods: See Attachment 1 to Summons Form 2039 for Period
18 Information"; bold emphasis in original) (as well as "December 31,
19 2011") were fully adjudicated in June, 2015, that I will comply upon
20 production of record evidence of assessment properly made in compliance
21 with 26 U.S.C. § 6203 and 26 C.F.R. 301.6203-1. I remain where I've
22 been, before during and since the administrative history leading up to
23 Exhibit B began, no later than January 4, 2010. Perhaps Marler should
24 summon the Assessment Officer for the signed "Assessment Certificate"
that meets the requirements of 26 C.F.R. 301.6203-1 instead of harassing
TOMARCO, a California company. Lastly,
5. This leaves 26 U.S.C. § 7609(c)(2)(E) as the final possible "exception"
under 26 U.S.C. § 7602(c)(3). However, as discussed above, 26 U.S.C. §

7602(d) would prohibit Marler from issuing – in Idaho – a Form 2039 summons; to a California company; regarding an individual in Washington, *with which individual* that California company has never had a contract.

Yet, Marler did, in fact, issue – in Idaho – a Form 2039 summons; to a California company; regarding an individual in Washington, *with which individual that California company has never had a contract.*

D. I contend that Marler's Form 2039 summons – issued in Idaho – is, or should be treated as, a “third party summons” – because it specifically seeks information

1. from a California company;
2. about an individual in Washington (a “third party”);
3. *with which individual* that California company has never had a contract; information that would most certainly come from
4. that California company’s attorney, “contracts with... including... sales contracts or employment contacts (sic)”;
5. that California company’s accountant, “payment instruments to”, and “1099s issued”,

both of which are defined – with respect to an individual in Washington (a “third party”) *with which individual* that California company has never had a contract, as “Third-party Recordkeepers” in 26 U.S.C. § 7603(b)(2), defined : “any attorney”, 26 U.S.C. § 7603(b)(2)(E); “any accountant” 26 U.S.C. § 7603(b)(2)(F).

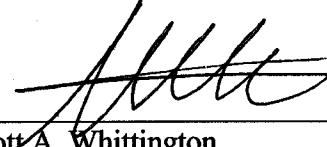
CONCLUSION; and DEMAND FOR RELIEF

Based upon the foregoing, I, Scott A. Whittington, respectfully demand that Brad

1 Marler's Form 2039 summons be quashed, or, in the alternative, that a Writ of Prohibition issue,
2 preventing Brad Marler, "REVENUE OFFICER, 1000395675", and signatory to "Signature of
3 Approving Officer" from proceeding upon same; and that

4 "TOMARCO, at "14848 NORTHAM ST, LA MIRADA, CA 90638" (sic)
be enjoined from complying with Marler's Form 2039 summons.

5 Entered this 3rd day of June, 2019.

6 
7 Scott A. Whittington

8 CERTIFICATE OF SERVICE

9 I, Scott A. Whittington, certify that I have served a copy of this Petition to Quash Third
10 Party Summons re Scott A. Whittington Alternatively, Petition for Extraordinary Writ: Writ of
11 Prohibition on this 3rd day of June, 2019 by registered mail:

12 pursuant to Fed.R.Civ.P. 4(i)(1)(A)(ii), to:

13 Civil Process Clerk
Attn: Brian T. Moran
United States Attorney's Office
1201 Pacific Avenue, Suite 700
14 Tacoma, WA 98402-4305

15 pursuant to Fed.R.Civ.P. 4(i)(1)(B), to:

16 William P. Barr, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
17 Washington, DC 20530-0001

18 pursuant to Fed.R.Civ.P. 4(i)(2), to:

19 Brad Marler
Internal Revenue Service
20 1820 E. 17th Street, Suite 290
Idaho Falls, ID 83404-6470

21 Steve Dyson
Internal Revenue Service
22 110 City Parkway
23 Las Vegas, NV 89106



Scott A. Whittington

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4 CC:
5 TOMARCO
6 14848 Northam St.
La Mirada, CA 90638
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